

1 **ARIZONA ATTORNEYS FOR CRIMINAL JUSTICE**  
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5 ***JOHN A. CANBY, SB#010574***

6 **IN THE SUPREME COURT OF THE STATE OF ARIZONA**

7  
8 In the Matter of: ) No. R-11-0033  
9 )  
10 )  
11 PETITION TO AMEND ER 3.8 OF ) **COMMENT ON PETITION TO**  
12 THE ARIZONA RULES OF ) **AMEND ER 3.8 OF THE ARIZONA**  
13 PROFESSIONAL CONDUCT (RULE ) **RULES OF PROFESSIONAL**  
14 42 OF THE ARIZONA RULES OF ) **CONDUCT**  
15 SUPREME COURT) )  
16 )

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17 Pursuant to Rule 28 of the Arizona Rules of Supreme Court, Arizona  
18 Attorneys for Criminal Justice (“AACJ”) hereby submits the following comment to  
19 the above-referenced petition. AACJ is a not-for-profit membership organization  
20 representing approximately four hundred criminal defense lawyers licensed to  
21 practice in the State of Arizona, as well as law students and other associated  
22 professionals, who are dedicated to protecting the rights of the accused in the  
23 courts and in the legislature.

24 AACJ supports the Petition and proposed rule change as providing necessary  
25 guidance to prosecutors in discharging their ethical responsibilities when faced  
26 with new evidence that an innocent person may have been wrongfully convicted.  
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1 **The Proposed Rule Change Does Not Place An Unreasonable Burden on**  
2 **Prosecutors.**

3 In order to fulfill their already existing obligation under Rule 15, Arizona  
4 Rules of Criminal procedure and *Brady v. Maryland*, 373 U.S. 83, 87 (1963),  
5 prosecutors in Arizona already are faced with the obligation to determine what  
6 information qualifies as “material” under Brady or which qualifies for disclosure  
7 under Rule 15.1(b)(8) as “...information which tends to mitigate or negate the  
8 defendant’s guilt as to the offense charged, or which would tend to reduce the  
9 defendant’s punishment therefore”. The prosecutors’ obligations under the  
10 proposed rule change are no more onerous in practice than these already existing  
11 obligations.  
12

13 **Prosecutors themselves recognize the value of the proposed rule change.**

14 As indicated in the Petition, the National District Attorneys Association  
15 recently adopted a standard similar to the proposed rule change which imposes the  
16 same obligation to bring after conviction exculpatory evidence to the attention of  
17 defense counsel, the defendant and the Courts.  
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19 **The Proposed Rule Change will protect prosecutors who follow the rule.**

20 The proposed rule change benefits prosecutors in that it provides prosecutors  
21 with guidelines they can cite to specifically in post-conviction cases and civil suits  
22 to demonstrate that they performed their duties diligently and as ministers of  
23 justice, after conviction as well as before conviction.  
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1 **The Proposed Rule Change Promotes the Primary Purpose of Our Justice**  
2 **System.**

3 One need look no further than the Ray Krone case for confirmation that  
4 wrongful convictions do occur in Arizona. The goal of our justice system has  
5 always been to avoid such cases and to convict the guilty and to avoid the wrongful  
6 conviction of innocent people. Other than practical workload concerns and  
7 unfounded fear of civil liability, it is difficult to imagine a principled objection to  
8 this rule change given its vital role in preventing the wrongful conviction of the  
9 innocent. In fact, the proposed rule change simply codifies the practice already  
10 followed by thoughtful and ethical prosecutors who have done everything in their  
11 power to prevent wrongful conviction. Having such a rule in place may have  
12 provided the prosecutors in the Ray Krone case with needed guidance and  
13 following the rules would have provided those same prosecutors with protection  
14 from any resulting civil liability.  
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21 DATED: May 21<sup>st</sup>, 2012.

22  
23 ARIZONA ATTORNEYS FOR CRIMINAL JUSTICE  
24

25 By /s/  
26 John Canby, President AACJ  
27  
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This comment e-filed this date with:

1  
2 Supreme Court of Arizona  
3 1501 West Jefferson  
4 Phoenix, AZ 85007-3329

5 Copies of this Comment  
6 Mailed this date to:

7 David Byers  
8 Administrative Office of Court  
9 1501 West Washington Street  
Phoenix, AZ 85007-3327

10 Petitioners:

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